

The Handbook of Competition Enforcement Agencies

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Overview

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The primary enforcement body of the competition rules in Norway is the Norwegian Competition Authority (NCA), located in Bergen.

The NCA has the statutory power to enforce the Norwegian Competition Act of 5 March 2004 No. 12 (the Act). According to the Act, the NCA has the powers to enforce adherence to the prohibitions and orders of the Act; intervene against concentrations where necessary; implement measures to promote market transparency; enforce articles 53 and 54 of the EEA Agreement; and call attention to any restrictive effects on competition of public measures and, where appropriate, submit proposals aimed at furthering competition and facilitating market access by new competitors.

In practice, enforcing the prohibitions of the Act (and the corresponding articles 53 and 54 EEA) and merger control is the predominant responsibilities for the NCA. Further, the NCA is obliged to assist the EFTA Surveillance Authority (ESA) or the Commission, or both, in their enforcement of the competition rules of the EEA Agreement and the EC Treaty, respectively.

The Norwegian Competition Act

The substantive law of the Act regulating the conduct of undertakings is modelled upon articles 81 and 82 EC. Thus, the Act prohibits anti-competitive agreements and the abuse of dominant position. The substantive law shall be interpreted in accordance with EC Competition law.

As regards the substantive review of mergers, the Act relies on the Substantial Lessening of Competition-test (SLC-test); contrasting the ECMR establishing the Significant Impediment of Effectiveness Competition-test (SIEC-test). As the thresholds for notifying mergers is unintelligibly low, the NCA considers numerous merger cases each year. Any company involved in a merger or being the purchaser in an acquisition should as a starting point take for granted that there is a duty to notify. Foreign-to-foreign concentrations must also be notified if the thresholds are fulfilled. Further, the Act lays down a prohibition to implement the merger prior to NCA approval. The NCA has recently announced its first decision

fining a company for violating this prohibition.

The primary sanction for violating prohibitions of the Act or any decisions made by the NCA is administrative fines. The rules on the setting of administrative fines are based on the corresponding EC rules. As opposed to the EC rules, the Act further criminalises violation of the Act and NCA decisions by establishing criminal fines or imprisonment as possible sanctions. Criminal sanctions are the responsibility of the prosecution authority for commercial crime (Økokrim). In practice, enforcement of criminal sanctions will be subject to cooperation between the NCA and Økokrim, at least in the initial phases.

Norway also has a leniency programme, applicable to infringements committed after 1 May 2004.

In line with the situation within the EU and other countries throughout Europe, the Act is based on private enforcement supplementing public enforcement. Two follow-up proceedings on action damages have recently been announced.

Judicial review

The relevant administrative appeal body for NCA decisions is the Ministry of Government Administration and Reform (the Ministry). This includes merger decisions. Several NCA decisions prohibiting mergers were set aside by the Ministry during the first years after the implementation of the Act (1 May 2004), resulting in a higher focus on remedies by the NCA. In merger cases involving questions of principle or interests of major significance to society, there is a provision giving the government the powers to make a decision on appeal without the prior consideration of the Ministry.

NCA decisions imposing administrative fines, for example in cartel cases or cases concerning abuse of dominant position, cannot be appealed to the Ministry but must be challenged before the courts. Up to now, two high-profile cases on abuse of dominant position have been challenged before the courts. One has resulted in an amicable settlement prior to the proceedings in the court of appeal; the other case is still pending before the first instance.

NORWAY

Trends

Contrasting its initial focus on cases concerning the abuse of dominant position, the NCA is now increasingly focusing on fighting cartels. The NCA has implemented several measures to improve both its own investigation unit and the cooperation with Økokrim. Further, the Ministry has recently suggested several amendments to the Act. These proposed amendments comprise first and foremost provisions relevant for prospective leniency applicants, as the Norwegian leniency programme has so far not been a success at all. If this fight against cartels is successful, we believe that there will be instigated more follow-up damages actions before Norwegian courts.

Public procurement

The Norwegian rules regulating public procurement is based upon corresponding EC rules. The enforcement body is The Norwegian Complaints Board for Public Procurement (KOFA), which is administratively subordinated the NCA.

State aid

There is no specific Norwegian body enforcing the state aid rules. Any alleged breach must be brought before the ESA.

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